

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 7132

BILL NUMBER: HB 1180

DATE PREPARED: Dec 23, 1998

BILL AMENDED:

SUBJECT: Death sentences sought on basis of race.

FISCAL ANALYST: Mark Bucherl

PHONE NUMBER: 232-9869

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill provides that if: (1) a defendant is charged with a murder for which the state seeks a death sentence; (2) the defendant makes a prima facie showing that racial considerations played a part in the state's decision to seek or impose the death sentence; and (3) the state fails to rebut the prima facie showing, the death sentence may not be imposed on the defendant.

This bill specifies that a prima facie showing that racial considerations played a part in the state's decision to seek or impose the death sentence is established if evidence shows that: (1) in the county where the defendant was charged, death sentences are sought or imposed upon persons of one race with a frequency that is disproportionate to their representation among the total number of persons arrested for, charged with, or convicted of crimes for which the state may seek the death sentence; (2) in the county where the defendant was charged, death sentences are sought or imposed as punishment for the murder of victims who are members of one race with a frequency that is disproportionate to their representation among the total number of persons who are victims of crimes for which the state may seek the death sentence and that have resulted in criminal charges being filed by the state; or (3) racial considerations played a part in the state's decision to seek or impose the death sentence against the defendant. It also requires the state to establish by clear and convincing evidence that identifiable and pertinent factors not based on race persuasively explain the state's decision to seek or impose the death sentence to rebut a prima facie showing that racial considerations played a part in the state's decision to seek or impose the death sentence.

Effective Date: July 1, 1999.

Explanation of State Expenditures: This bill provides that the state may not pursue the death penalty for murder when a defendant shows that racial considerations played a part in seeking the death penalty and the state fails to rebut the finding. It also allows defendants currently sentenced to death to petition under this provision for post-conviction relief. There are currently 44 persons in Indiana on Death Row. Of these, 28 are Caucasian, 15 are African-American, and one is Hispanic.

Death sentence conviction appeals based on this statute could involve state entities, including: (1) the Office of Attorney General which is involved in death penalty cases in appeals made by the criminal defendant to the State Supreme Court and to the U.S. Supreme Court (as well as any subsequent federal habeas corpus petitions); and (2) the State Public Defender's Office which represents the criminal defendant after the appeal is affirmed in all post conviction proceedings in state court.

Explanation of State Revenues:

Explanation of Local Expenditures: This bill may act to increase costs for cases in which the death penalty is sought. Prosecutor's offices and public defender's offices may experience additional administrative costs in preparing cases that involve racial bias allegations.

Research indicates that the trial and appeals costs for death penalty cases can be two to three times more than the current range of \$37,000 to \$90,000 spent to impose prison sentences. (Death penalty case costs may be further inflated due to additional police investigation and court time, prosecution resources, and the costs of a lengthy jury trial with a sequestered jury.)

Explanation of Local Revenues:

State Agencies Affected: Office of Attorney General, State Public Defender's Office.

Local Agencies Affected: Trial courts, prosecutors, local public defenders.

Information Sources: Steve Johnson, Prosecuting Attorney's Council, 232-1836; Planning Division, Department of Correction.